

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE KENTUCKY PUBLIC SERVICE COMMISSION)	
)	
vs.)	CASE NO. 8814
)	
SUBURBAN SEWAGE TREATMENT, INC.)	

ORDER ON REHEARING

On August 24, 1984, the Commission issued an Order finding that Paul and Justine Pelphrey were the beneficial owners of Suburban Sewage Treatment, Inc., ("Suburban") and, as such, should be held responsible for maintaining the system so as to insure adequate service to the 16 residences served by the treatment plant. The Pelphreys sought rehearing of the August 24, 1984, Order. The Commission granted the request and a second evidentiary hearing was held on January 16, 1985.

On rehearing, the Pelphreys testified that the monthly charges paid by Suburban's customers are received by them, endorsed by either Justine or Paul Pelphrey, and deposited in the account for Mr. Pelphrey's home construction business, Paradise Homes. (Transcript, January 16, 1985, hearing, p. 11.) The remainder of the Pelphreys' testimony dealt with the history of how they more or less "inherited" the sewage plant upon the death of its original builder, and how they were trying to organize the

residences served by the plant into some sort of entity that could take over and operate the plant in accordance with Commission regulations.

Suburban is a typical "orphan" sewer utility. That is, the sewage plant was built by an individual (usually a home builder desiring to enhance the value of his property) and then the individual who constructed the sewage plant simply disappears, or dies as in the present case. This then leaves the future operation of the system up to either the homeowners who depend on the system for service, or another individual who has a strong interest in seeing that sewage service is maintained to this particular subdivision.

In the present case, Mr. Paul Pelphrey is the individual who has this strong interest in seeing that sewage service is maintained in this area since his firm, Paradise Homes, is still building new houses in the area. (Tr., p. 28.) This explains the Pelphreys' willingness to collect the payment from the residents each month and then see that certain expenses of operating the plant (such as the electric bill) are paid in order to keep the system operating.

Under these facts, it is clear that the Pelphreys never "intended" to get into the sewage treatment business and thereby become a public utility subject to state regulation. However, the Kentucky General Assembly has stated that the simple engaging in certain acts (specified in KRS 278.010) by an individual, partnership, or corporation will create a public utility; "intent" to become a utility is simply not a factor. The

evidence from both hearings in this matter clearly shows that the Pelphreys are (1) maintaining the sewage treatment plant for the homeowners served by it (i.e., they are "providing the service") to 16 residences (the "public"), and receiving "compensation" for this service (the money from the residents comes to the Pelphreys and they deposit it in their account). As such, the Pelphreys clearly fall within the definition of a "sewer utility" as set forth in KRS 278.010(3)(f) -- "service..."to the public"...for "compensation." For these reasons, the Commission will sustain its original finding that Paul and Justine Pelphrey are the "possessors, operators, and beneficial owners of the sewer system known as Suburban." (August 24, 1984, Order, p. 6.)

As pointed out above, there was extensive discussion at the January 16, 1985, hearing regarding the efforts of the Pelphreys to encourage the residents served by the system to take over and operate it for their own benefit. Apparently these efforts have progressed to the point that the residents have now incorporated themselves into the Paradise Valley Sewage Plant, Inc. (Tr., p. 14.) The Commission commends the Pelphreys in initiating and encouraging this type of "self-help" action since a "homeowners association" is usually the best long term solution where "orphan" utility systems are involved. For this reason, the Commission will defer all filing requirements by the Pelphreys to this Commission normally required by sewer utilities until such time as a definite plan for operating the system by the homeowners has been completed and submitted to this Commission for approval.

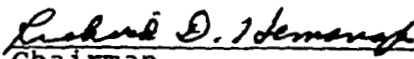
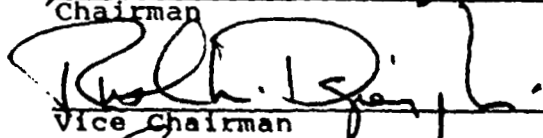
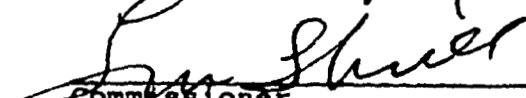
IT IS THEREFORE ORDERED that all findings contained in the Commission's August 24, 1984, Order are affirmed in their entirety.

IT IS FURTHER ORDERED that within 60 days from the date of this Order, Paul and Justine Pelphrey shall file a report with this Commission outlining the status to date of the efforts of the Paradise Valley Sewage Plant, Inc., to take over the financial and operational responsibilities of Suburban.

IT IS FURTHER ORDERED that if no report is filed within 60 days, Paul and Justine Pelphrey will be required to comply with all ordering paragraphs set forth in the August 24, 1984, Order.

Done at Frankfort, Kentucky, this 27th day of March, 1985.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary